

CHAPTER 4. ETHICS COMMITTEE PROCEDURES FOR EVALUATING AND ADJUDICATING COMPLAINTS

Part 1. Notice and Review of Ethics Complaint for Sufficiency and Jurisdiction

JR6-4-101. Review of Ethics Complaint for Compliance with Form Requirements and Notice of Complaint To Committee Members.

(1) (a) Within five days after receipt of the complaint, the staff of the committee, in consultation with the chair and cochair, shall examine each complaint to determine if it is in compliance with JR6-3-101.

(b) (i) If the chair and cochair determine that the complaint does not comply with JR6-3-101, the chair shall return the complaint to the complainants with a copy of the legislative rules on ethics.

(ii) The complainants may resubmit the complaint.

(c) If the chair and cochair determine that the complaint complies with this title, the chair shall:

(i) accept the complaint;

(ii) notify each member of the ethics committee that the complaint has been filed; and

(iii) provide each member of the ethics committee with a copy of the complaint.

(2) No committee member or staff may disclose publically any information received by the committee concerning any alleged violation until the member of the Senate or House charged in the violation has received the Summary of the Preliminary Inquiry required by JR6-4-206.

JR6-4-102. First Ethics Committee Meeting -- Jurisdictional and Claim Review.

(1) Within 30 days after the complaint is accepted, the chair and cochair shall:

(a) schedule an ethics committee meeting; and

(b) place the ethics complaint on the agenda for consideration at that meeting with the recommendation that:

(i) the complaint be considered; or

(ii) the complaint be dismissed because it fails to allege facts that constitute a violation.

(2) (a) At the ethics committee meeting, the committee shall determine:

(i) whether or not the alleged violation in the complaint is within the jurisdiction of the committee; and

(ii) whether or not the complaint merits further inquiry.

(b) The chair shall notify the complainants and respondent, in writing, of the determination made by the committee.

(3) If the committee determines that the complaint merits further inquiry, the committee meeting shall become a preliminary inquiry to determine whether the alleged violation occurred.

Part 2. Preliminary Inquiry

JR6-4-201. General Rules Governing Preliminary Inquiries.

(1) The scope of the preliminary inquiry is limited to the alleged violations stated in the complaint.

(2) (a) Only relevant or material evidence is admissible in the preliminary inquiry.

(b) The chair's determination of admissibility is final and may only be overruled by a majority vote of the committee.

(3) At the beginning of the preliminary inquiry, in order to expedite the committee's investigation and to facilitate a rapid resolution of the matter, the committee cochair and the respondent may agree in writing that the procedural requirements of Part 3, Disciplinary Hearing, are waived.

(4) (a) The preliminary inquiry is closed to the public.

(b) The respondent and the respondent's counsel may be present during the presentation of testimony and evidence to the committee.

(c) Only Ethics Committee members and staff may be present during other portions of the preliminary inquiry.

(5) Except for the official record, no camera or recording device may be brought in or used in the preliminary inquiry.

(6) Upon consent of a majority of its members, the committee may permit any person, not compelled or invited, to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record.

(7) (a) The release of any testimony or other evidence presented at a closed hearing and the form and manner of that release shall be by a majority vote of all members of the committee.

(b) Committee members and committee staff may not publicly disclose any other part of the preliminary inquiry.

(8) If a majority of the committee determines that further evidence and testimony are necessary, the committee shall:

(a) adjourn and continue the preliminary inquiry hearing to a future date; and

(b) establish that future date by majority vote.

JR6-4-202. Chair as Presiding Judge.

(1) The committee chair is vested with the power to direct the committee in the preliminary inquiry.

(2) (a) If a committee member objects to a decision of the chair, that member may appeal the decision to the committee by stating: "I appeal the decision of the chair."

(b) This motion is nondebatable.

(c) The chair shall direct a roll call vote to determine if the committee membership supports the decision of the chair.

(d) A majority vote of the committee is necessary to overrule the decision of the chair.

(3) The chair may set time limitations on any part of the preliminary inquiry.

JR6-4-203. Testimony and Examination of Witnesses -- Oath -- Contempt.

(1) At the direction of the committee chair and cochair, the committee may hear the testimony of the complainants, the respondent, and witnesses.

(2) (a) Each witness shall testify under oath.

(b) Legislative General Counsel shall administer the oath to each witness.

(3) The chair shall permit the witness to make a brief opening statement if the witness desires.

(4) The committee chair shall direct the examination of the witness as follows:

(a) After the witness's presentation, the chair shall:

(i) give committee members the opportunity to question the witness; and

(ii) give the respondent the opportunity to question the witness.

(b) The committee chair may allow further examination of the witness by the committee, committee staff, or the respondent.

(5) (a) If the witness objects to a question, the chair may direct the witness to answer.

(b) If the witness still declines to answer the question, the witness may be held in contempt as provided in JR6-2-202.

(6) (a) The committee chair shall direct each witness to furnish any relevant evidence for the committee's consideration if the witness has brought the material voluntarily or has been required to bring it by subpoena.

(b) If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in JR6-2-202.

(7) The chair may allow a witness to insert into the record a sworn written statement of reasonable length that is relevant to the purpose, subject matter, and scope of the investigation.

JR6-4-204. Right to Counsel -- Limitations on Counsel.

(1) Any witness testifying before the committee may have the witness's counsel present.

(2) During the preliminary inquiry, counsel for a witness shall confine his activity exclusively to private advice to his client about the witness's legal rights.

(3) Counsel for a witness may not:

(a) advise the witness during the witness's testimony, except when specifically requested by the witness;

(b) address the committee;

(c) ask questions of any witness, including the counsel's client; or

(d) engage in oral arguments with the committee.

(4) Because the committee seeks factual testimony within the personal knowledge of the witness, the witness's counsel may not suggest testimony and answers to the witness during the inquiry, but must allow the witness to present testimony and answer questions without prompting or suggestions.

(5) If the witness's counsel fails to comply with any of the requirements of this JR6-4-204, the chair may exclude the counsel from the preliminary inquiry.

JR6-4-205. Rights of the Respondent.

The chair shall give the respondent an opportunity to respond, orally or in writing, to the allegations stated in the complaint.

JR6-4-206. Record.

(1) The chair shall ensure that:

(a) a record of the preliminary inquiry is made; and

(b) the record includes:

(i) rulings of the chair;

(ii) questions of the committee and its staff;

(iii) the testimony and responses of witnesses;

(iv) sworn statements submitted to the committee;

(v) relevant documents; and

(vi) any other matters that the committee or its chair directs.

(2) After the preliminary inquiry is completed, the staff of the committee shall keep a file containing a comprehensive summary of the inquiry.

JR6-4-207. Process for Making a Decision -- Remedies -- Publication of Decision.

(1) If, at the conclusion of the preliminary inquiry in which the procedural requirements of Part 3, Disciplinary Hearing, are not waived, the committee determines, by a preponderance of the evidence, that there is reason to believe that the alleged violation did occur, the committee shall direct staff to prepare a Summary of the Preliminary Inquiry.

(2) If, at the conclusion of the preliminary inquiry in which the procedural requirements of Part 3, Disciplinary Hearing, are waived, the committee determines, by clear and convincing evidence, that the alleged violation did occur, the committee shall direct staff to prepare a Summary of the Preliminary Inquiry.

(3) (a) After the announcement of the committee's decision in the Summary of the Preliminary Inquiry, if the procedural requirements of Part 3, Disciplinary Hearing, have been waived, the committee shall determine what recommendation should be made to the Senate or House with respect to any count that has been proved as provided in Subsection (4).

(b) The committee may not hear any further testimony during the preliminary inquiry, except by a majority vote of the committee.

(4) (a) A count is not proved unless a majority of the committee so determine by vote.

(b) A count that is not proved is dismissed.

(c) If a majority of the committee does not vote that a count has been proved, a motion to reconsider that vote may only be made by a member of the committee who voted that the count was not proved.

(5) (a) The committee may, for any count that has been voted as proved, recommend one or more of the following actions:

(i) censure;

(ii) expulsion;

(iii) denial or limitation of any right, power, or privilege of the respondent, if, under the Utah Constitution, the Senate or House may impose that denial or limitation, and if the violation bears upon the exercise or holding of any right, power, or privilege; or

(iv) any other action that the committee determines is appropriate.

(b) If a majority of the committee does not vote in favor of the recommendation for action, a motion to reconsider may only be made by a member of the committee who voted against the recommendation.

Part 3. Disciplinary Hearing

JR6-4-301. Disciplinary Hearing -- General Provisions.

(1) If there is no waiver of the disciplinary hearing as provided in JR6-4-201(3), the Senate and House Ethics Committees shall follow the procedures in this part to prepare for and conduct a disciplinary hearing.

(2) (a) Before beginning any disciplinary hearing, the committee shall:

(i) adopt a statement establishing the scope and purpose of the hearing; and

(ii) provide a copy of the statement to each witness.

(b) The scope and purpose of the hearing may expand or contract during the hearing, depending upon the evidence received.

(3) The respondent has the right to counsel during all stages of the disciplinary hearing.

(4) The disciplinary hearing is open to the public.

JR6-4-302. Appointment of Special Prosecutor.

(1) (a) The chair shall appoint a special prosecutor.

(b) This special prosecutor shall be paid by the Senate if it is a Senate Ethics Committee or the House if it is a House Ethics Committee.

(2) The special prosecutor shall:

(a) prepare the Statement of Alleged Violation as provided in JR6-4-303; and

(b) act as prosecutor against the respondent in the disciplinary hearing.

JR6-4-303. Statement of Alleged Violation.

(1) In preparing the Statement of Alleged Violation, the special prosecutor shall, after reviewing the Summary of the Preliminary Inquiry, ensure that:

(a) the statement is divided into separate counts; and

(b) each count alleges a separate violation and includes the facts that support each alleged violation.

(2) After completing the Statement of Alleged Violation, the special prosecutor shall:

(a) review the statement with the committee chair and committee staff;

(b) obtain approval of the statement from the committee chair; and

(c) transmit the Statement of Alleged Violation to the respondent and to the complainants.

JR6-4-304. Response to Statement of Alleged Violation.

(1) Within 30 calendar days after receipt of the Statement of Alleged Violation, the respondent may file a written response to the statement, which must be signed by the respondent or the respondent's counsel.

(2) The respondent shall limit the response to the following:

(a) an admission or denial of each count, under oath, with any supportive evidence or relevant information;

(b) an objection to any or all counts on the grounds that the count fails to state facts that constitute a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to a member of the Senate or House in the performance of legislative responsibilities;

(c) an objection to the jurisdiction of the committee considering the allegations contained in the statement;

(d) a motion for a more detailed statement regarding the cause of action stated in the complaint;
or

(e) an objection to the participation of any member of the committee, the committee's staff, or the special prosecutor on the grounds that that person would be unable to render a fair and impartial judgment or investigation.

(3) If the respondent fails to submit a response to the Statement of Alleged Violation or to any count contained in it, the statement or count constitutes an admission of the alleged violation.

JR6-4-305. Committee Action on Statement of Alleged Violation and Response.

(1) (a) Within 30 calendar days after receipt of the respondent's response or the respondent's failure to respond within that time, the committee shall determine, by majority vote, to:

(i) dismiss the complaint;

(ii) grant or deny the respondent's motion for a more detailed statement, and if this motion is granted, direct the special prosecutor to give more detail in the Statement of Alleged Violation and give the respondent 30 days from receipt of this statement to respond as provided in JR6-4-304;

(iii) hold a disciplinary hearing; or

(iv) defer action, if a judicial proceeding is pending.

(b) If the committee is unable to obtain a majority vote directing further proceedings against the respondent, the statement and complaint are considered dismissed.

(2) The chair shall ensure that the respondent and complainants are notified, in writing, of the action taken by the committee.

(3) The chair may:

(a) extend any time limitation, if the extension would facilitate a fair and complete inquiry; or

(b) shorten any time limitation, if special circumstances require it.

(4) (a) If an objection to the participation of any person is raised in the respondent's response under JR6-4-304(2)(e), the committee, by majority vote, shall:

(i) evaluate the person against whom the objection is raised to determine whether or not the person can fairly and impartially participate; and

(ii) by majority vote, determine whether or not to allow that person to participate.

(b) If a majority of the committee does not agree to exclude the person, the person may participate.

JR6-4-306. Disciplinary Hearing -- General Requirements -- Two Phases.

The disciplinary hearing is open to the public and consists of two phases:

(1) In Phase I, the committee must determine whether or not the counts in the Statement of Alleged Violation have been proved by clear and convincing evidence.

(2) In Phase II, the committee must determine what recommendation should be made to the Senate or House with respect to any count that has been proved.

JR6-4-307. Disciplinary Hearing Process -- Phase I, Adjudication Phase.

(1) The chair shall:

(a) call the meeting to order;

(b) describe the committee's authority to conduct the hearing;

(c) inform the committee, the respondent, and the attendees of the purpose and scope of the hearing; and

(d) proceed with the hearing.

(2) Witnesses and evidence shall be received in the following order whenever possible:

(a) witnesses and evidence offered by the special prosecutor;

(b) witnesses and evidence offered by the respondent; and

(c) rebuttal witnesses.

(3) All witnesses shall testify under oath.

(4) Witnesses offered by the special prosecutor shall be:

- (a) examined first by the special prosecutor;
- (b) cross-examined by the respondent or the respondent's counsel;
- (c) examined by committee members and committee staff; and
- (d) redirect examination and recross examination, if permitted by the chair.

(5) Witnesses offered by the respondent shall be:

- (a) examined first by the respondent or respondent's counsel;
- (b) cross-examined by the special prosecutor;
- (c) examined by committee members and committee staff; and
- (d) redirect examination and recross examination if permitted by the chair.

(6) At the disciplinary hearing, the burden of proof rests upon the special prosecutor, who must establish a violation of any facts by clear and convincing evidence.

(7) (a) For a count to be proved, a majority of the committee must vote that it is proved by clear and convincing evidence.

(b) The chair shall dismiss each count that is not proved by majority committee vote.

(c) If a majority of the committee does not vote that a count has been proved, a motion to reconsider that vote may only be made by a member of the committee who voted that the count was not proved.

JR6-4-308. Disciplinary Hearing Process -- Phase II, Penalty Phase -- Remedies.

(1) The committee may not hear any further testimony during Phase II unless a majority of the committee votes to allow additional testimony.

(2) In Phase II of the disciplinary hearing, the committee may, for any count that has been voted as proved, recommend one or more of the following actions:

- (a) censure;
- (b) expulsion;
- (c) denial or limitation of any right, power, or privilege of the respondent, if:
 - (i) under the Utah Constitution, the Senate or House may impose that denial or limitation; and
 - (ii) the violation bears upon the exercise or holding of the right, power, or privilege; or

(d) any other action that the committee determines is appropriate.

(3) If a majority of the committee does not vote in favor of the recommendation for action, a motion to reconsider may only be made by a member of the committee who voted against the recommendation.

(4) The chair shall ensure that the committee's recommendation to the Senate or House is:

(a) submitted in writing; and

(b) contains a brief but complete statement of the evidence that supports the committee's recommendations.

JR6-4-309. Announcement of Decision.

At the conclusion of the committee's deliberations in the disciplinary hearing, when a decision has been reached, the chair shall inform the respondent and his counsel of the committee's decision.

JR6-4-310. Records of Disciplinary Hearing.

After the disciplinary hearing is completed, the staff of the committee shall keep a file containing a comprehensive summary of the disciplinary hearing.